

No. ~~100~~ 30

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HAROLD B. WILLEY, Clerk

IN THE  
**Supreme Court of the United States**  
**OCTOBER TERM, 1956**

Kings County Clerk's Index No. 8700, Year 1951

In the Matter of the

Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the  
Administrative Code of The City of New York,

**LIST OF DELINQUENT TAXES**

Sections 10, 11, 12, and 13

Borough of Brooklyn, Action No. 4

Serial No.	Section	Block	Lot
887	12	3831	12

Queens County Clerk's Index No. 3000, Year 1950

In the Matter of the

Foreclosure of Tax Liens pursuant to Title D of Chapter 17 of the  
Administrative Code of The City of New York,

**LIST OF DELINQUENT TAXES**

Sections 1 and 2

Borough of Queens, Action No. 1

Serial No.	Section	Block	Lot
83	1	78	9

THE CITY OF NEW YORK,

*Plaintiff-Respondent.*

GERALD D. NELSON, GERALDINE D. N. ACKER and GERTRUDE N. FITZPATRICK,  
as Successor Trustees under the Will of William Nelson, deceased, and  
HELEN D. MOLLER,

*Defendants-Foreclosed Owners-Appellants.*

ON APPEAL FROM THE COURT OF APPEALS  
OF THE STATE OF NEW YORK

**JURISDICTIONAL STATEMENT**

WILLIAM P. JONES  
36 West 44th Street  
New York 36, N. Y.

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IN THE  
**Supreme Court of the United States**

**OCTOBER TERM, 1955**

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83	1	78	9

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THE CITY OF NEW YORK,

*Plaintiff-Respondent.*

GERALD D. NELSON, GERALDINE D. N. ACKER and GERTRUDE N. FITZPATRICK,  
as Successor Trustees under the Will of William Nelson, deceased, and  
HELEN D. MOLLER,

*Defendants-Foreclosed Owners-Appellants.*

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ON APPEAL FROM THE COURT OF APPEALS  
OF THE STATE OF NEW YORK

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**JURISDICTIONAL STATEMENT**

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**Introduction**

(References to Record are by Folio No.)

Appellants appeal from the final order of the New  
York Court of Appeals sustaining the validity under



the Fourteenth Amendment to the United States Constitution of the actions of the City of New York in taking appellants' properties by "Foreclosure *In Rem*" actions pursuant to the New York City Administrative Code. Appellants submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

(a) Opinions Below

The memorandum decision of the New York Court of Appeals, dated October 13, 1955, and reported in 309 N. Y. 801; 130 N. E. 2d 602, is annexed as Appendix "A."

The *per curiam* opinion of the New York Court of Appeals, dated July 8, 1955, and reported in 309 N. Y. 94, 96; 127 N. E. 2d 827, is annexed as Appendix "B."

The memorandum decision of the Appellate Division of the New York Supreme Court (2nd Dept.) dated October 11, 1954, and reported in 284 App. Div. 894(3) and 134 N. Y. S. 2d 597; is annexed as Appendix "C."

The opinion of Special Term, Part I, of the New York Supreme Court for the County of Kings (R. 418-420) reported in N. Y. L. J., May 4, 1954, p. 11, col. 8 (not otherwise reported), is annexed as Appendix "D."

### (b) Jurisdiction

(i) Pursuant to Title D of Chapter 17 of the New York City Administrative Code, the City of New York proceeded to foreclose by actions *in rem* a tax lien which it held on each of appellants' real properties. The City acquired title to the two properties by reason of appellants' inadvertent failure to redeem or answer in the two foreclosure actions within the time prescribed by the Code. Thereafter appellants brought motions in each of the foreclosure actions for relief from the default judgments, for permission to redeem their properties and to file answers in the actions on the ground, among others, that the action of the City was an unlawful taking of appellants' properties and violated their rights as guaranteed by the Constitution of the United States.

(ii) The New York Court of Appeals made its order of affirmance on July 8, 1955. On appellants' motion for reargument and for amendment of the remittitur, that Court issued its final order on October 13, 1955, denying reargument but amending the remittitur. The notice of appeal was duly served on November 30, 1955 and thereafter filed with the Clerks of Kings and Queens Counties, the former being possessed of the Record herein.

The motion to the New York Court of Appeals for reargument and for amendment of the remittitur having been timely made, October 13, 1955, the date that Court decided that motion measures the time for taking the appeal to this Court. The notice of appeal herein having been served on November 30, 1955 and filed with the Clerk of Kings County on December 1,

1955, the within appeal is timely (*Department of Banking v. Pink*, 317 U. S. 264; *Chicago G. W. R. Co. v. Basham*, 249 U. S. 164).

(iii) The jurisdiction of the Supreme Court to review the decision of the New York Court of Appeals by direct appeal is conferred by Title 28, U. S. C. Section 1257 (2).

(iv) The following decisions sustain the jurisdiction of the Supreme Court to review the order on direct appeal in this case:

*Covey; Committee of Brainard v. Town of Somers*, (United States Supreme Court Docket No. 380, filed September 9, 1955; order of Supreme Court "noting probable jurisdiction" dated November 7, 1955 [5847-9]; reported below in 308 N. Y. 941; 127 N. E. 2d 90).

Also *Dahnke-Walker Milling Co. v. Bondurant*, 257 U. S. 282.

(v) The validity of the action of the City of New York in taking appellants' properties pursuant to the New York City Administrative Code is involved and is claimed by appellants to be repugnant to the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. The statute is Chapter 411 of the Laws of New York, 1948, having been passed by the New York Legislature as an amendment to the Administrative Code of the City of New York, and known thereafter as Title D of Chapter 17 of that Code. The text is set forth as Appendix "E."

(c) Questions Presented

1. Whether the taking by the City of New York of Appellants' two properties herein involved was, on the facts presented in the Record, a deprivation of their property without due process under the Fourteenth Amendment to the United States Constitution?
2. Whether the taking by the City of New York of Appellants' two properties herein involved was, on the facts presented in the Record, a denial of equal protection of the laws under the Fourteenth Amendment to the United States Constitution?
3. Whether Chapter 17, Title D of the Administrative Code of the City of New York, being Chapter 411 of the laws of 1948 of the State of New York is repugnant to the United States Constitution as it was applied by the City of New York in taking Appellants' two properties under the circumstances and on the facts presented in the Record, in that such application results in a deprivation of property without due process and denies Appellants equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution?

(d) Statement of the Case

Appellants are successor trustees of a trust established under the Will of William Nelson, deceased.

The two real properties taken by the City of New York in two *in rem* foreclosure actions were assets of the trust.

The first parcel assessed for \$6,000., known as 21-17 45th Avenue, Long Island City, Queens, had been owned in fee by appellants since December 21, 1938. During the entire period of appellants' ownership the real estate taxes were paid (with the exception of the second half of 1948/9), and the property was regularly maintained. Through inadvertence stemming from the defalcations of a trusted bookkeeper the water charges were not paid commencing with the year 1945. On May 22, 1950, the City commenced an action for foreclosure *in rem* for the non-payment of \$72.50 of water charges. The City purported to take title on August 22, 1950, and on February 21, 1951, sold the property for \$7,000., retaining the entire proceeds. For the years thereafter the City directed real estate tax bills to appellants which appellants paid and the City accepted. Appellants had no actual notice of the foreclosure action and did not discover the loss of this property until November 1952. (R. 275-291)

The second and much more valuable of appellants' two properties is known as 525 Powell Street, Brooklyn (Kings County) and is assessed for \$46,000. Appellants had owned it in fee since October 30, 1934, and all the real estate taxes were paid, excepting the second half of 1948/9. As in the case above the property was well maintained and produced a reasonable return on investment from the \$9,273. gross annual rents.

Like the case above water charges were unpaid from 1945. On December 17, 1951 the City commenced an action for foreclosure *in rem* for the non-payment of \$814.50 of water charges. The City pur-



ported to take title to the Powell Street property on May 19, 1952; it still has title and possession and presumably has been collecting the \$9,275. gross annual rents.

As in the instance above appellants had no actual notice of the foreclosure actions and were unaware of the loss of their Powell Street property until November 1952 (R. 40-89).

After vainly offering to pay all tax arrears, with interest and penalties due the City (R. 51) the present appellants on February 4, 1953, commenced an action in the Supreme Court pursuant to Article 15 of the New York Real Property Law to cancel the deed of the Powell Street property to the City of New York and for the recovery of the proceeds of the sale of the 45th Avenue property. That action was based on the ground, among others, that the action of the City was invalid and violated rights guaranteed appellants by the Constitution of the United States.

From the judgment entered on the order granting the City's motion for summary judgment and for judgment on the pleadings made in that action an appeal was taken to the Appellate Division of the New York Supreme Court, Second Department. On February 1, 1954, the order below was affirmed in a decision which was stated to be without prejudice to the then plaintiffs bringing motions in the foreclosure actions to open the default judgments.

That action, while no part of the present proceeding, is relevant here to show appellants' uninterrupted diligence to recover their properties once their loss was discovered in November 1952.

## How the Federal Question Is Presented

On March 16, 1954, appellants brought motions in the two foreclosure actions in Special Term, Part I of the New York Supreme Court for Kings County to open the default judgments.

One of the specific grounds for each motion was as follows (R. 36, 37, 272):

"(3) that the application by the City of New York of Title D of Chapter 17 of the Administrative Code for collection of tax liens on defendants' property, under all the circumstances of this case, violates defendants' rights as guaranteed by the Constitutions of the United States and of the State of New York."

In the affidavits of William P. Jones in support of appellants' motions in the court of first instance the federal question was again specifically presented (R. 90, 113, 116):

"12. Under all the circumstances of this case the City's application of the in rem procedure to collect two relatively insignificant water charges on defendants' two properties—was an abuse of the purpose of the statute, was contrary to the intent of the Legislature, and violated defendants' rights under the Constitutions of the United States and of the State of New York."

"13. While Title D of Chapter 17 of the Administrative Code of the City of New York may be generally constitutional, it is defendants' position that its application in this case was con-

fiscatory, amounting to taking private property for public use without just compensation."

"24. In view of the clear intent of the Legislature, the shocking disparity between the amount of the City's just charges and the value of the confiscated properties, and in light of all of the above circumstances, the use of the in rem procedure in this case was flagrant abuse of the taxing power to accomplish a taking of private property for public use without just compensation, and a deprivation of property without due process of law."

"26. While the general constitutionality of Title D might be conceded defendants challenge the constitutionality of its application to the circumstances of this case. For this reason deponent believes defendants' application is novel since deponent has not found any case where a taxpayer has sought relief specifically under §D17-23.0 or §166-1 of the Tax Law."

The invalidity of the City's action in violation of appellants' rights under the Federal Constitution was urged upon the court of first instance in appellants' brief and upon the oral argument of the motions. Since the court of first instance (Special Term, Part I) denied the motions "in all respects" (R. 24) the action of the City in taking appellants' properties was held to be valid, not repugnant to the Federal Constitution and not violative of appellants' rights thereunder.

Likewise, these points were presented in the record on appeal to the Appellate Division of the New York Supreme Court and to the New York Court of Ap-

peals and were urged upon those courts in appellants' briefs and in counsel's oral arguments. In each court the orders below were affirmed.

On the motion for reargument in the Court of Appeals and for amendment of the remittitur, that Court denied reargument but amended the remittitur to show that upon the appeal

"there were presented and necessarily passed upon questions under the Constitution of the United States, as follows: The appellants argued that the taking by the City of New York of the property here involved was, on this record, a taking of private property for public use without just compensation under the Fifth Amendment, and deprived them of due process and equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States. The Court of Appeals held that the rights of defendants under the Fifth and Fourteenth Amendments of the Constitution of the United States had not been violated or denied."

(Appendix A, page 15, *infra*; *Covey, etc. v. Town of Somers*, page 4, *supra*.)

#### (e) The Questions Are Substantial

It is respectfully submitted that the questions herein presented are so substantial as to require plenary consideration with briefs on the merits and oral argument for their resolution.

When the City of New York by foreclosure *in rem* confiscated appellants' properties assessed at \$52,000.

to collect water charges of \$887. there was available for collecting such minor liens the normal, in such cases, and then existing alternative method provided by Title A, Chapter 17 of the Administrative Code of the City of New York. Under Title A confiscation of the property is impossible; ultimate collection of the tax lien must be by sale of the property as in an action to foreclose a mortgage, with consequent distribution of surplus proceeds (if any) to those interests entitled (R. 100-109).

It was the capricious choice of a City tax official, in abuse of the legitimate purpose of the statute, in applying the *in rem* collection method on the facts of this case which was an invalid act depriving appellants of due process and equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution (*Yick Wo v. Hopkins*, 118 U. S. 356).

The City's application of its foreclosure *in rem* statute and its prototype, Title 3 of the New York State Tax Law has resulted in frequent forfeitures in New York City and in taxing districts elsewhere in New York State. Properties worth vastly more than the "foreclosed" lien have been confiscated. (See *Covey etc. v. Town of Somers*, page 4, *supra*, where an incompetent's property worth \$6,500. was taken for arrears of \$480.) The present case, however, involves the grossest disparity of which there is any *in rem* record.

New York City's *in rem* statute, dispensing with sales of properties foreclosed for tax liens, seems to be an attempted reversion to the ancient practice



of "strict" mortgage foreclosure, the abuse of which was well known when the Federal Constitution was adopted, and which, when the Fourteenth Amendment was ratified, had already been superseded everywhere, either by the development of equitable principles or by statute, by the requirement of public sales.

This Court has not passed on the constitutionality of either of the above statutes nor on the validity under the Federal Constitution of any challenged acts of any tax authority taken thereunder. Certiorari was denied in *Echo Bay Waterfront Corp. v. New Rochelle*, 326 U. S. 720 (No. 104); 294 N. Y. 678 and 771; 61 N. E. 2d 779.

The constitutionality of Title 3 of the New York State Tax Law; the prototype of the City's *in rem* foreclosure statute, has, however, been seriously doubted by the New York Court of Appeals in *Lynbrook Gardens, Inc. v. Ullman*, 291 N. Y. 472; 53 N. E. 2d 353. In that case a purchaser refused to accept a deed on the ground that the seller's title was defective since it derived from a tax district through a foreclosure *in rem* under Title 3 of the New York Tax Law and that the statute was invalid under the United States Constitution. The Court of Appeals refused to decree specific performance, recognizing that the statute had been challenged on substantial grounds. The Court said at page 477:

"Even though this court were to sustain the validity of the statute, the Supreme Court of the United States might still reach a different conclusion. A subsequent purchaser could at any time reject title on that ground and litigate that

question in a different forum. A title which can be challenged in that manner is not marketable and decree of specific performance may not be rendered under such circumstances."

The result of this situation is to cast grave doubt on the marketability of any title derived under New York City's foreclosure *in rem* statute, as well as under its prototype, Title 3 of the New York State Tax Law.

**For the foregoing reasons, we believe that the Federal questions presented by this appeal are substantial and that they are of broad public importance.**

Respectfully submitted,

WILLIAM P. JONES  
36 West 44th Street  
New York 36, N. Y.

## APPENDIX A

## MEMORANDUM DECISION

309 N. Y. 801; 130 N. E. 2d 602

CITY OF NEW YORK,

Respondent,

v.

GERALD D. NELSON et al., as Successor Trustees under the  
Will of William Nelson, Deceased, et al.,

Appellants.

COURT OF APPEALS OF NEW YORK

October 13, 1955.

Motion for reargument denied.

Motion to amend remittitur granted. Return of remittitur requested and, when returned, it will be amended by adding thereto the following: Upon the appeal herein there were presented and necessarily passed upon questions under the Constitution of the United States, as follows: The appellants argued that the taking by the City of New York of the property here involved was, on this record, a taking of private property for public use without just compensation under the Fifth Amendment, and deprived them of due process and equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States. The Court of Appeals

*Appendix A*

held that the rights of defendants under the Fifth and Fourteenth Amendments of the Constitution of the United States had not been violated or denied. (See *City of New York v. Nelson*, 309 N. Y. 94.)

Motion to stay the City of New York from proceeding with the sale or disposition of the subject property granted to and including November 12, 1955, to enable appellants to apply to the Supreme Court of the United States or to a Justice thereof for a stay in connection with an application for a writ of certiorari.

## APPENDIX A (1)

### THE ORDER APPEALED FROM

STATE OF NEW YORK,

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the thirteenth day of October, A. D. 1955.

Present, HON. ALBERT CONWAY, *Chief Judge*, presiding.

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Mo. No. 397

In the Matter of

the Foreclosure of Tax Liens Pursuant to Title D of Chapter 17 of the Administrative Code of The City of New York, &c.

---

and another proceeding

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THE CITY OF NEW YORK,

Respondent,

GERALD D. NELSON, & ORS., as Successor Trustees under the Will of William Nelson, Deceased, & ano.,

Appellants.

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A motion for reargument or, in the alternative, to amend the remittitur in the above cause having been heretofore made upon the part of the appellants herein



*Appendix A (1)*

and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion, insofar as it seeks re-argument, be and the same hereby is denied, and it is

FURTHER ORDERED, that the said motion, insofar as it seeks to amend the remittitur, be and the same hereby is granted. Return of the remittitur requested and, when returned, it will be amended by adding thereto the following:

Upon the appeal herein there were presented and necessarily passed upon questions under the Constitution of the United States, as follows: The appellants argued that the taking by the City of New York of the property here involved was, on this record, a taking of private property for public use without just compensation under the Fifth Amendment, and deprived them of due process and equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States. The Court of Appeals held that the rights of the defendants under the Fifth and Fourteenth Amendments of the Constitution of the United States had not been violated or denied. (See *City of New York v. Nelson*, 309 N. Y. 94.)

AND the Supreme Court, Kings County, is hereby requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

A copy

(SEAL.)

GEARON KIMBALL  
Deputy Clerk

## APPENDIX B

## PER CURIAM OPINION

309 N. Y. 94, 96; 127 N. E. 2d 827

CITY OF NEW YORK,

Respondent,

v.

GERALD D. NELSON et al., as Successor Trustees under the  
Will of William Nelson, deceased, et al.,  
Appellants.

COURT OF APPEALS OF NEW YORK

July 8, 1955.

APPEAL, by permission of the Court of Appeals, from an order of the Appellate Division of the Supreme Court in the second judicial department, entered October 11, 1954, which unanimously affirmed (1) an order made at a Special Term of the Supreme Court held in Kings County (DI GIOVANNA, J.), and entered in Queens County, denying a motion by defendants for relief from a judgment of foreclosure in rem entered on default, and (2) an order of said court entered in Kings County denying a similar motion for relief from another judgment of foreclosure entered on default.

WILLIAM P. JONES and WATSON WASHBURN for appellants.

V. The use of the in rem statute in this particular case was unconstitutional.

*Per Curiam.* The order appealed from should be affirmed without costs.

*Appendix B*

This is indeed a hard case. Defendants acquired title to the Powell Street property in 1934 and to the 45th Avenue property in 1938, and paid the real estate taxes due thereon. For the nonpayment of water charges, the city acquired title to these properties in an in rem tax foreclosure sale under title D of chapter 17 of the Administrative Code of the City of New York, as follows:

Property	Water Arrears	Assessed Value
45th Avenue 4-story brick and stone rooming house	\$72.50	Assessed by the City at \$6,000 and resold by it for \$7,000 re- taining the entire proceeds.
Powell Street 4-story apartment house with 28 apartments	\$814.50	Assessed by the City at \$46,000; with a gross annual rent in- come of \$9,275.

Thus, for total arrears of \$887, the city acquired properties assessed at \$52,000, one of which parcels was resold in excess of its assessed valuation.

The nonpayment of the water charges was due to the default of a trusted bookkeeper, and was discovered when he attempted suicide. The city continued to bill the estate of which plaintiffs are trustees for the real estate taxes on the 45th Avenue property for two years after it had acquired title.

Unfortunately, the power to afford relief here is not confided to the courts. The result suggests the need of legislation liberalizing the right of redemption, or giving to city officials the power to ameliorate such extreme hardships in appropriate cases.

CONWAY, *Ch. J.*, DESMOND, DYE, FULD, FROESSEL and VAN VOORHIS, *JJ.*, concur; BURKE, *J.*, taking no part.

Order affirmed.

## APPENDIX C

## MEMORANDUM DECISION

284 App. Div. 894(3); 134 N. Y. S. 2d 597

CITY OF NEW YORK,

Respondent,

v.

GERALD D. NELSON et al., as Successor Trustees under the  
 Will of William Nelson, Deceased, et al.,  
 Appellants.

APPELLATE DIVISION OF THE NEW YORK SUPREME COURT  
 (2nd DEPARTMENT.)

October 11, 1954

The former owners of two parcels of real property, title to which had been acquired by respondent through in rem foreclosure, appeal from two orders denying their motions, pursuant to section 108 of the Civil Practice Act, to relieve them from default judgments entered in the foreclosure actions, and for other relief. Orders affirmed, without costs. (*City of Peekskill v. Perry*, 272 App. Div. 940; *City of New York v. Lynch*, 281 App. Div. 1038, *affd.* 306 N. Y. 809; *Town of Somers v. Covey*, 283 App. Div. 883.) Nolan, P. J., Adel, Schmidt, Beldock and Murphy, JJ., concur.

## APPENDIX D

OPINION OF SPECIAL TERM, PART I, SUPREME  
COURT OF NEW YORK, KINGS COUNTY

New York Law Journal — May 4, 1954

In re Foreclosure of Tax Liens (Estate of William Nelson)—Both motions are treated as one. Application for an order pursuant to Civil Practice Act, section 108, relieving the defendants, the foreclosed owners of the respective fee titles, from default judgments of foreclosure in rem and permitting the defendants to redeem the parcels in question by payment of all tax liens, with interest, or permitting the defendants to interpose answers in the above entitled actions. Upon the record herein it appears that all proceedings in these actions have been in accordance with Title D of Chapter 17 of the Administrative Code of the City of New York. In particular, the trustees admit mailing by the City of New York of the notice of foreclosure to them at the address of the office maintained by them and the receipt of such notice by their trusted employee. The failure of the trustees to receive direct notice of the in rem foreclosure is attributable to their misplaced confidence in their trusted bookkeeper and agent, who allegedly concealed all notices received from the city to cover up his defalcations. The provisions of Administrative Code, Title D, section 17-6.0, preclude the court from extending the time to answer or redeem (*Matter of Foreclosure of Tax Liens, Town of Somers* [Covey], App. Div., 2d Dept., N. Y. L. J., April 13, 1954, p. 10; *Hawley v. City of N. Y.*, App. Div., 2d Dept., N. Y. L. J., April 13, 1954, p. 10; *City of N. Y. v. Lynch*, 281 App. Div., 1038, aff'd by the Court of Appeals, N. Y. L. J., March 8, 1954, p. 6). Both motions are denied in all respects. Settle order on notice.



## APPENDIX E

*(Applicable Statute)*

### TITLE D, CHAPTER 17, ADMINISTRATIVE CODE OF THE CITY OF NEW YORK

#### FORECLOSURE BY ACTION IN REM

§ D17-1.0 DEFINITIONS.—Whenever used in this title the following terms shall mean:

1. "Tax lien." Any unpaid tax, assessment or water rent and interest or penalty thereon, which is a lien on real property whether or not the same be evidenced by a transfer of tax lien or any other written instrument.

2. "Court." The supreme court.

§ D17-2.0 APPLICABILITY OF PROCEDURE OF FORECLOSURE IN REM.—a. The provisions of this title shall be applicable only to tax liens owned by the city.

b. The provisions of this title shall not affect any existing remedy or procedure for the enforcement or foreclosure of tax liens provided for in this code or any other law, but the remedy provided herein for foreclosure by action in rem shall be in addition to any other remedies or procedures provided by any general, special or local law.

c. The provisions of this title shall not affect pending actions or proceedings, provided, however, that any pending action or proceeding for the enforcement or foreclosure of tax liens may be discontinued, and a new action may be instituted pursuant to the provisions of this title, in respect to any such tax lien.

§ D17-3.0 JURISDICTION.—The supreme court shall have jurisdiction of actions authorized by this title.

*Appendix E*

§ D17-4.0 FORECLOSURE BY ACTION IN REM.—Whenever it shall appear that a tax lien which has been due and unpaid for a period of at least four years from the date on which the tax, assessment or other legal charge represented thereby became a lien, such tax lien, except as otherwise provided by this title, may be summarily foreclosed in the manner provided in this title, notwithstanding the provisions of any general, special or local law and notwithstanding any omission to hold a tax sale prior to such foreclosure. Ownership of a transfer of tax lien or of a tax sale certificate or of any other instrument evidencing such tax lien by the city shall be evidence of the fact that the tax, assessment or other legal charge represented thereby have not been paid to the city or assigned by it.

§ D17-5.0 FILING OF LIST OF DELINQUENT TAXES.—The city treasurer shall file in the office of the clerk of the county in which the property subject to such tax liens is situated, a list of parcels of property in such county affected by unpaid tax liens held and owned by the city which on the date of filing shall have been unpaid for a period of at least four years or more after the date when the tax, assessment or other legal charge represented thereby became a lien and the city treasurer shall from time to time thereafter continue to file additional lists of parcels of property affected by unpaid tax liens held and owned by the city which on the respective dates of filing shall have been unpaid for a period of at least four years or more after the date when the tax, assessment or other legal charge represented thereby became a lien. Each such list shall comprise all such parcels within a particular section or ward designated on the tax maps of the city, except those parcels excluded from such lists as hereinafter provided. Before filing any list of parcels of property, the city treasurer with the approval of the

*Appendix E*

board of estimate, may exclude particular parcels therefrom. The city treasurer when requesting approval of the exclusion of any particular parcel shall state the reasons therefor in writing. No parcel shall be excluded from any such list for any reason other than the following: (1) that a meritorious question has been raised by a person having an interest in such parcel as to the validity of the tax lien affecting such parcel, or (2) that the city treasurer before the effective date hereof had agreed to accept payment of delinquent taxes, assessments or other legal charges in instalments of at least two years of such arrears with each year of current taxes, assessments or other legal charges and that there has been no default in such agreement, or (3) that an agreement has been duly made and executed and filed with the city treasurer for the payment of such delinquent taxes, assessments or other legal charges in instalments, the first of which shall be in an amount equal to at least twenty-five per centum of such arrears payable upon the date of making and filing with the city treasurer of the instalment agreement, and the balance of which shall be in amounts equal to at least two years of such arrears and payable with each year of current taxes, assessments or other legal charges and that there has been no default in such agreement, or (4) that within two years last past the city treasurer had sold or the city had assigned a tax lien owned and held by the city to a person who had not completed all of the proceedings necessary to enforce such tax lien. The city treasurer shall transmit a list of all parcels within the particular section or ward selected which are affected by tax liens which shall have been unpaid for a period of at least four years and an additional list which shall designate the parcels on the first list which should be excluded. The board of estimate upon receipt of such lists shall cause them to be published in the City Record. The list covering the parcels to be excluded shall set forth

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as to each such parcel, the reason for exclusion. Such publication shall also contain a general description of the boundaries of the section or ward affected, but need not contain measurements or directions. Such list of all parcels and such additional list designating the parcels to be excluded from the first list shall not be approved at the meeting of the board of estimate at which they appear on the calendar for the first time, nor shall such board approve the exclusion of any parcel at any succeeding meeting unless one week has elapsed after the meeting when such exclusion was first submitted for approval. The approval of such exclusion by the board of estimate shall be by resolution recorded in its minutes, stating the reason therefor. All parcels included in any list shall be numbered serially. The city treasurer shall file a copy of each such list, certified by the county clerk, in his main office and in each branch office and in the office of the corporation counsel. Such lists shall be known and designated as the "List of Delinquent Taxes" and shall bear the following caption: "Supreme Court, ..... County. In the matter of foreclosure of tax liens pursuant to title D of chapter seventeen of the administrative code of the city of New York. List of delinquent taxes." Where the list comprises parcels in a particular section or ward the caption shall also refer to such section or ward.

The inadvertent failure of the city treasurer to include all parcels in such list, or where more than one list is filed, all such parcels in the list for the designated section or ward shall not affect the validity of any proceeding brought hereunder. Each such list shall also contain as to each parcel, the following:

(a) A brief description sufficient to identify each parcel affected by such tax lien. A description by stating the lot, block and section or ward number, street and street number, if there be such, or other identification

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numbers of any parcel upon a tax map, or a lot number or other identification number of any tract, the map of which is filed in the county clerk's or register's office, shall be a sufficient description. An omission or error in the designation of a street or street number shall not affect the validity of any proceeding brought hereunder, either as to such parcel or any other parcels.

(b) The name of the last known owner of such parcel as the same appears on the assessment roll for the year preceding the calendar year in which such list is filed.

(c) A statement of the amount of each tax lien upon such parcel including those which shall have been due and unpaid for less than four years together with the date or dates from which and the rate and rates at which interest and penalties shall be computed.

Such list of delinquent taxes shall be verified by the affidavit of the city treasurer. The filing of such list of delinquent taxes in the office of the clerk of the county in which the property subject to such tax liens is situated shall constitute and have the same force and effect as the filing and recording in said office of an individual and separate notice of pendency of action and as the filing in the supreme court in such county of an individual and separate complaint by the city against the real property therein described, to enforce the payment of the delinquent taxes, assessments or other lawful charges which have accumulated and become liens against such property.

Each county clerk with whom such list of delinquent taxes is filed shall index it in a separate book kept for that purpose which shall constitute due filing, recording and indexing of such notice in lieu of any other requirement under section one hundred twenty-two of the civil practice act or otherwise.

§ D17-6.0 PUBLIC NOTICE OF FORECLOSURE.—Upon the filing of such list in the office of the county clerk, the city treas-



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urer forthwith shall cause a notice of foreclosure to be published at least once a week for six successive weeks in the City Record and in two newspapers designated by the city treasurer and published within the county in which the property affected by such list is located, except that in the county of Richmond one of the newspapers designated may be published in the county of New York or in the county of Kings. In New York and Bronx counties the newspapers to be designated for the publication of such notice or any other public notice required pursuant to this article shall be the daily law journal designated by the justices of the appellate division of the first judicial department and another newspaper designated by said justices pursuant to the provisions of subdivisions one and two of section ninety-seven of the judiciary law. Such notice shall be in substantially the following form: Supreme Court, ..... County.

**NOTICE OF FORECLOSURE OF TAX LIENS  
BY THE CITY OF NEW YORK IN THE BOR-  
OUGH OF .....** (here insert name of  
Borough, and section or ward number and general  
description giving boundaries of section or ward.  
Such description need not contain measurements or  
directions.)

**BY ACTION IN REM**

Please take notice that on the....day of.....  
the Treasurer of the City of New York, pursuant to law,  
filed with the Clerk of.....County, a list of  
parcels of property affected by unpaid tax liens, held and  
owned by said City of New York which on the....day  
of....., had been unpaid for a period of at  
least four years after the date when the tax, assessment,  
or other legal charge became a lien. Said list contains  
as to each such parcel, (a) a brief description of the prop-  
erty affected by such tax lien, (b) the name of the last

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known owner of such property as the same appears on the assessment roll for the last calendar year or a statement that the owner is unknown if such be the case, (c) a statement of the amount of such tax lien upon such parcel, including those which shall have been due and unpaid for less than four years together with the date or dates from which, and the rate or rates at which interest and penalties thereon shall be computed.

All persons having or claiming to have an interest in the real property described in such list of delinquent taxes are hereby notified that the filing of such list of delinquent taxes constitutes the commencement by the city of New York of an action in the Supreme Court, ..... County to foreclose the tax liens therein described by a foreclosure proceeding in rem and that such list constitutes a notice of pendency of action and a complaint by the City of New York against each piece or parcel of land therein described to enforce the payment of such tax liens. Such action is brought against the real property only and is to foreclose the tax liens described in such list.

No personal judgment shall be entered herein for such taxes, assessments or other legal charges or any part thereof.

This notice is directed to all persons having or claiming to have an interest in the real property described in such list of delinquent taxes and such persons are hereby notified further that a certified copy of such list of delinquent taxes has been filed in the main office of the city treasurer in the Borough of Manhattan and in the office of the city treasurer at ....., in the Borough of ....., and will remain open for public inspection up to and including the .... day of ..... (here insert a date at least seven weeks from the date of the first publication of this notice,) which date is hereby fixed as the last date for redemption.

And take further notice that any person having or

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claiming to have an interest in any such parcel and the legal right thereto may on or before said date redeem the same by paying to the city treasurer the amount of all such unpaid tax liens thereon and in addition thereto all interest and penalties which are a lien against such real property computed to and including the date of redemption. In the event that such taxes are paid by a person other than the record owner of such property, the person so paying shall be entitled to have the tax liens affected thereby satisfied of record or to receive an assignment of such tax liens evidenced by a proper written instrument.

Every person having any right, title or interest in or lien upon any parcel described in such list of delinquent taxes may serve a duly verified answer upon the corporation counsel setting forth in detail the nature and amount of his interest or lien and any defense or objection to the foreclosure. Such answer must be filed in the office of the county clerk in the county in which such real property is located and served upon the corporation counsel at any time after the first date of publication but not later than twenty days after the date above mentioned as the last day for redemption. In the event of failure to redeem or answer by any person having the right to redeem or answer, such person shall be forever barred and foreclosed of all his right, title and interest and equity of redemption in and to the parcel described in such list of delinquent taxes and a judgment in foreclosure may be taken by default.

.....  
Treasurer

.....  
Corporation Counsel  
Office and Post Office Address

.....  
Borough of Manhattan  
City of New York"

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On or before the date of the first publication of the notice above set forth, the treasurer shall cause a copy of such notice to be mailed to the last known address of each owner of property affected thereby, as the same appears upon the records in the office of the city treasurer, and in the event that the name or address of such owner does not appear in such records the city treasurer shall so state in an affidavit which shall be filed in the office of the county clerk and the treasurer shall cause a copy of such notice to be posted in the office of the treasurer, in the county court house of the county in which the property subject to such tax lien is situated and three other conspicuous places in the borough in which the affected properties are located. The treasurer shall cause to be inserted with or attached to such notice a statement substantially as follows: "To the party to whom the enclosed notice is addressed: You are the presumptive owner or lienor of one or more of the parcels mentioned and described in the list referred to in the enclosed notice."

Unless the taxes and assessments and all other legal charges are paid, or an answer interposed, as provided by statute, the ownership of said property will in due course pass to the city of New York as provided by the Administrative Code of the City of New York.

Dated .....

.....  
Treasurer"

§ D17-7.0 NOTICE TO MORTGAGEE OR LIENOR.—Any owner of real property, any mortgagee thereof, or any person having a lien or claim thereon, or interest therein may file with the city treasurer a notice stating his name, residence and post office address and a description of the parcel in which such person has an interest, which notice shall continue in effect for the purposes of this section

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for a period of ten years, unless earlier canceled by such person. The city treasurer shall mail to each such person forthwith after the completion and filing of the list of delinquent taxes as herein provided, a copy of each notice required under this title and affecting such parcel. The failure of the city treasurer to mail such notice as herein provided shall not affect the validity of any proceeding brought pursuant to this title.

§ D17-8.0 FILING OF AFFIDAVITS.—All affidavits of filing, publication, posting, mailing or other acts required by this title shall be made by the person or persons performing such acts and shall be filed in the office of the county clerk of the county in which the property subject to such tax lien is situated and shall together with all other documents required by this title to be filed in the office of such county clerk, constitute and become a part of the judgment roll in such foreclosure action.

§ D17-9.0 TRIAL OF ISSUES.—If a duly verified answer is served upon the corporation counsel within the period mentioned in the notice published pursuant to section D17-6.0 the court shall summarily hear and determine the issues raised by the complaint and answer in the same manner and under the same rules as it hears and determines other actions, except as in this title otherwise provided. Upon such trial, proof that such tax was paid, together with any interest or penalty which may have been due, or that the property was not subject to tax shall constitute a complete defense. Whenever an answer is interposed as herein provided, the defendant shall have an absolute right to the severance of the action as to any parcel or parcels of land in which he has an interest, upon written demand therefor filed with or made a part of his answer.



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§ D17-10.0 PREFERENCE OVER OTHER ACTIONS.—Any action brought pursuant to this title shall be given preference over all other causes and actions, and no such action shall be referred except to an official referee and the supreme court is hereby given jurisdiction to make such reference.

§ D17-11.0 PRESUMPTION OF VALIDITY.—It shall not be necessary for the city to plead or prove the various steps, procedures and notices for the assessment and levy of the taxes, assessments or other lawful charges against the lands set forth in the list of delinquent taxes and all such taxes, assessments or other lawful charges and the lien thereof shall be presumed to be valid. A defendant alleging any jurisdictional defect or invalidity in the tax or in the sale thereof must particularly specify in his answer such jurisdictional defect or invalidity and must affirmatively establish such defense. The provisions of this title shall apply to and be valid and effective with respect to all defendants even though one or more of them be infants, incompetents, absentees or non-residents of the state of New York.

§ D17-12.0 FINAL JUDGMENT.—a. The court shall have full power to determine and enforce in all respects the priorities, rights, claims and demands of the several parties to said action, as the same shall exist according to law, including the priorities, rights, claims and demands of the defendants as between themselves, and in a proper case to direct a sale of such lands and the distribution or other disposition of the proceeds of the sale. The court shall further determine upon proof and shall make finding upon such proof whether there has been due compliance by the city with the provisions of this title.

b. Any sale directed by the court shall be at public auction by the city treasurer. Public notice thereof shall

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be given by publication in the manner provided in section nine hundred eighty-six of the civil practice act. The city treasurer shall receive no fee or compensation for such service. The description of the parcel offered for sale in such notice shall be that contained in the list of delinquent taxes with such other description, if any, as the court may direct.

c. In directing any conveyance pursuant to this title, the judgment shall direct the city treasurer to prepare and execute a deed conveying title to the parcel or parcels concerned. Said title shall be full and complete. Upon the execution of such deed the grantee shall be seized of an estate in fee simple absolute in such parcel unless expressly made subject to tax liens accrued or accruing subsequent to those contained in the list of delinquent taxes, and all persons, including the state of New York, infants, incompetents, absentees and non-residents, except the city, who may have had any right, title, interest, claim, lien or equity of redemption in or upon such parcel, shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption.

d. The court shall make a final judgment awarding to the city the possession of any parcel described in the list of delinquent taxes not redeemed as provided in this title and as to which no answer is interposed as provided herein. In addition thereto such judgment shall contain a direction to the city treasurer to prepare, execute and cause to be recorded a deed conveying to the city full and complete title to such lands subject only to tax liens accrued or accruing subsequent to those contained in the list of delinquent taxes. Upon the execution of such deed, the city shall be seized of an estate in fee simple absolute in such land and all persons, including the state of New York, infants, incompetents, absentees and non-residents who may have had any right, title, interest, claim, lien or

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equity of redemption in or upon such lands shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption.

§ D17-13.0 WITHDRAWAL OF PARCELS FROM FORECLOSURE.—The city treasurer may at any time prior to final judgment withdraw any parcel from a proceeding under this title with the approval by resolution of the board of estimate stating the reason therefor. No parcel shall be withdrawn from such proceeding except for one of the reasons set forth in section D17-5.0 of this title as a reason for exclusion of a parcel from a list of delinquent taxes to be filed. Upon such withdrawal the tax liens on any parcel so withdrawn shall be and remain the same as if no action had been instituted and the city treasurer shall issue a certificate of withdrawal which shall be filed with the county clerk who shall note the word "withdrawn" and the date of such filing opposite the description of such parcel on the list. Such certificate may include one or more parcels appearing on any list. Such notice shall operate to cancel the notice of pendency of action with respect to any such parcel.

§ D17-14.0 RIGHT OF REDEMPTION NOT DIMINISHED.—The period of time in which any owner of, or other person having an interest in a parcel of property may redeem from a sale of a transfer of tax lien is not hereby diminished nor shall such period of time be diminished by the commencement of any action brought pursuant to this title.

§ D17-15.0 PRIORITY OF LIENS.—Tax liens shall rank in priority as may now, or as may hereafter, be provided by law.

§ D17-16.0 MAILING TAX BILLS.—It shall be the duty of the city treasurer, upon receipt of the assessment roll and

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tax bills to the owners of property assessed so far as such owners and their addresses are known." But the failure of the city treasurer to mail such tax bills shall not invalidate or otherwise affect such tax nor prevent the accruing of any interest or penalty imposed for the non-payment thereof, nor prevent or stay proceedings under this title, nor effect the title of the plaintiff or purchaser under such proceedings.

§ D17-17.0 REGISTERING OWNER, MORTGAGEE, ET CETERA.—The owner of property liable to assessment, a mortgagee thereof, or a person having a lien or claim thereon, may file with the city treasurer a notice stating his name and post-office address, a description of the premises by reference to section or ward, block and lot numbers on the tax map, which notice shall continue in effect for the purposes of this section for the period of ten years, unless earlier cancelled by such person. Service of notice or process shall be made upon such persons who have filed a notice in respect to such premises. Such service may be made personally or by mail to the address designated in said notice. The failure to receive such notice as herein provided shall not effect the validity of any action or proceeding brought pursuant to this title.

§ D17-18.0 WRIT OF ASSISTANCE.—The city, after acquiring title to premises under and pursuant to the terms and provisions of this title, shall be entitled to a writ of assistance, with the same force and effect as if the city had acquired the property by virtue of a mortgage foreclosure.

§ D17-19.0 CONSOLIDATION OF ACTIONS.—Actions or proceedings pending in the courts, or otherwise, to cancel a sale of a tax lien on lands a lien upon which is being foreclosed by action under this title, shall be terminated

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upon the institution of a foreclosure action pursuant to this title, and the rights and remedies of the parties in interest to such pending actions or proceedings shall be determined by the court in such foreclosure action.

§ D17-20.0 LANDS HELD FOR PUBLIC USE; RIGHT OF SALE.—

Whenever the city shall become vested with the title to lands by virtue of a foreclosure proceeding brought pursuant to the provisions of this title, such lands shall, unless actually used for other than municipal purposes, be deemed to be held by the city for a public use but for a period of not more than three years from the date of the final judgment. The city is hereby authorized to sell and convey such lands in the manner provided by law for the sale and conveyance of other real property held and owned by the city and not otherwise.

§ D17-21.0 CERTIFICATE OF SALE AS EVIDENCE.—

The transfer of tax lien or any other written instrument representing a tax lien shall be presumptive evidence in all courts in all proceedings under this title by and against the purchaser and his representatives, heirs and assigns, of the truth of the statements therein, of the title of the purchaser to the property therein described, and of the regularity and validity of all proceedings had in reference to the taxes, assessments or other legal charges for the non-payment of which the tax lien was sold and the sale thereof. After two years from the issuance of such certificate or other written instrument, no evidence shall be admissible in any court in a proceeding under this title to rebut such presumption unless the holder thereof shall have procured such transfer of tax lien or such other written instrument by fraud or had previous knowledge that it was fraudulently made or procured.



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§ D17-22.0 DEED IN LIEU OF FORECLOSURE.—The city may when authorized by resolution of the board of estimate and in lieu of prosecuting an action to foreclose a tax lien on any parcel pursuant to this title accept a conveyance of the interest of any person having any right, title, interest, claim, lien or equity of redemption in or to such parcel.

§ D17-23.0 SEVERABILITY OF PROVISION.—The powers granted and the duties imposed by this title and the applicability thereof to any persons, the city or circumstances shall be construed to be independent and severable and if any one or more sections, clauses, sentences or parts of this title or the applicability thereof to any persons, the city or circumstances shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof or the applicability thereof to other persons or circumstances, but shall be confined in its operation to the specific provisions so held unconstitutional and invalid and to the persons and circumstances affected thereby.

§ D17-24.0 SALES AND FORECLOSURES OF TAX LIENS. Notwithstanding any of the provisions of this title the city may continue to sell tax liens, transfer the same to purchasers and become the purchaser at such sales of tax liens in the manner provided by this chapter.

§ 2. This act shall take effect on the first day of July, nineteen hundred forty-eight.